ALVIN B. GENDELMAN

IBLA 82-623

Decided October 1, 1982

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease application M 51528(ND) Acq.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

Under 43 CFR 3102.2-1(c), the necessary information required by 43 CFR 3102.2-6 for agents acting on behalf of simultaneous oil and gas lease applicants may be filed in any Bureau of Land Management office. Upon acceptance of the filing by the Bureau of Land Management and assignment of a serial number, the serial number may be referenced on future oil and gas lease applications filed with any Bureau of Land Management office in lieu of resubmitting the information.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

Where a simultaneous oil and gas leasing filing service establishes an agent's qualifications file pursuant to 43 CFR 3102.2-1(c), and references that file on an application, but the file contains only an expired authorization for the named applicant, the application is properly rejected.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Filing

The provisions of 43 CFR 3102.2-6 must be strictly construed and where an oil and gas lease applicant or his agent fails to

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comply therewith, the application must be rejected.

APPEARANCES: Craig R. Carver, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Alvin B. Gendelman appeals from the February 11, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting his acquired lands lease application for parcel MT-182, which was drawn with first priority in the simultaneous oil and gas drawing held during May 1981. BLM stated in the decision:

Alvin B. Gendelman filed the first drawn application for Parcel MT 182 on the Montana May 1981, simultaneous list. The 21-day simultaneous filing period was from 8:00 a.m., May 1, 1981, to 4:30 p.m., May 21, 1981. The application indicates that statements of qualifications have previously been filed under serial records, C-20340 and C-26188.

* * * * * * *

We find from the documents submitted by the Colorado State Office, that Mr. Gendelman did not (1) comply with 43 CFR 3102.2-6(a) since he did not submit the personally signed copy of the written agreement with the lease application; (2) comply with 43 CFR 3102.2-6(b) since his filing service, Melbourne Concept, Inc./Stewart Capital Corporation, did not file a single copy of their uniform agreement with a list setting forth the name and address of their applicants, including Mr. Gendelman, with the Montana State Office, the <u>proper BLM office</u> * * *; or (3) comply with 43 CFR 3102.2-1(c) since the qualification file was not current as required by the regulation.

The application filed by Alvin B. Gendelman is rejected for failure to comply with the regulations in 43 CFR 3102.2-6(a), 3102.2-6(b), or 3102.2-1(c). [Emphasis in original.]

The documents which had been filed with the Colorado State Office and which constituted the package which had been assigned the serial number C-20340 by that office consisted of the following: A copy of the original contract between Melbourne Concept, Inc. (Melbourne), Stewart Capital Corporation (Stewart), and Gendelman, filed on July 22, 1980; copies of renewals of the original contract filed for the September and November 1980, and January 1981, filing periods; and a document filed on May 21, 1981, which indicated the names of clients filing pursuant to the original contract and renewals. Each renewal of the original contract is designated "Annex C." No Annex C was filed during the May 1981 filing period, although appellant alleges there had been an oral renewal of the original contract. On August 10, 1981, the attorney for Gendelman and the filing service filed with the Colorado State Office a copy of an Annex C, which showed an execution date by Gendelman of May 15, 1981, and a letter noting that the Annex C memorialized in writing the oral renewal of the original contract.

The question in this case is whether there was compliance with the agent qualification regulations. 1/ Counsel for appellant concedes that Stewart neither complied nor attempted to comply with 43 CFR 3102.2-6(a). Counsel asserts, however, that Stewart did comply with 43 CFR 3102.2-6(b). That regulation provides as follows:

(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title.

In <u>Alvyn G. Novotny</u>, 55 IBLA 196, 198 (1981), this Board held that 43 CFR 3102.2-6(b) provides an alternative to compliance with 43 CFR 3102.2-6(a). Another alternative allows an applicant pursuant to 43 CFR 3102.2-1(c) <u>2</u>/ to comply with 43 CFR 3102.2-6 by placing evidence of agency qualifications on file and making reference in future filings, by the assigned serial number, to such evidence, rather than submitting such evidence with each filing. <u>Arthur H. Kuether</u>, 65 IBLA 184, 188 (1982); <u>Alvyn G. Novotny</u>, <u>supra</u> at 198.

Counsel for appellant also asserts that Stewart's filing of its uniform agreement and list of applicants in the Colorado State Office rather than in

^{1/} On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the agent qualifications found in 43 CFR 3102.2-6. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

^{2/} The regulation 43 CFR 3102.2-1(c) provides in pertinent part:

[&]quot;(c) Filing statements for reference. A statement of the qualifications of a[n] * * * agent, if the duration of the authority to act is less than 2 years and is specifically set out (§ 3102.2-6) * * * may be placed on file with a Bureau of Land Management office described in § 1821.2-1 of this title. The office receiving the statement shall indicate its acceptance of the qualifications by assigning a serial number to the statement. Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement. Such a reference shall constitute certification that the statement complies with paragraph (b) of this section. Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current." (Emphasis added.)

the Montana State Office complied with 43 CFR 3102.2-1(c) and 3102.2-6(b), and that Stewart's agency qualification file was current and complete.

Despite the assertion of compliance with 43 CFR 3102.2-6(b), there was no compliance with that regulation, independent of 43 CFR 3102.2-1(c), because no copy of a uniform agreement was filed with appellant's application. Therefore, our focus will be on compliance pursuant to 43 CFR 3102.2-1(c).

The facts in this case are that on July 14, 1980, appellant entered into a filing service agreement with Stewart and Melbourne. That agreement was filed with the Colorado State Office on July 22, 1980. BLM assigned agency serial number C-20340 to the file. Appellant executed renewal contracts, designated Annex C's, for certain filing periods. An Annex C is a short-form contract which adopts by reference the lengthy terms of the original contract. In the May 1981 simultaneous drawing in Montana, Stewart filed an application for appellant referencing C-20340. Stewart also filed on May 21, 1981, with the Colorado State Office a list of existing clients which included appellant's name. That list stated, "[F]iling pursuant to original contract or annex C's previously filed." No Annex C was filed with BLM in Montana or Colorado for appellant by Stewart during the May 1981 filing period.

[1] We will first examine the grounds for rejection listed by BLM. BLM stated that appellant did not comply with 43 CFR 3102.2-6(b) because Stewart failed to file a uniform service agreement with a list of clients' names and addresses with the Montana State Office. BLM considered the Montana State Office to be the only "proper BLM office" under 43 CFR 3000.0-5(g). 3/ While this ground may support lack of compliance with 43 CFR 3102.2-6(b), as noted above, there was no compliance with 43 CFR 3102.2-6(b), independent of 43 CFR 3102.2-1(c). Therefore, we will analyze this ground for rejection for compliance with 43 CFR 3102.2-1(c), as it relates to 43 CFR 3102.2-6(b).

As pointed out by appellant, 43 CFR 3102.2-1(c) provides that a statement of qualifications by an agent may be filed with any BLM office described in 43 CFR 1821.2-1. In this case Stewart established a qualifications file in the Colorado State Office. Although 43 CFR 3102.2-6(b) makes reference to the proper BLM office, which could be interpreted as triggering the definition in 43 CFR 3000.0-5(g), the necessary interpretation, given the interplay between 43 CFR 3102.2-6(b) and 43 CFR 3102.2-1(c), is that when the serial reference number has been used, filings may be in the office where the qualifications file has been established. In fact, such a finding was implicit in the Board's decision in Robert R. Amdahl, 62 IBLA 246 (1982), which turned on the timeliness of filing the necessary documents. In that case a qualifications file was established in the Colorado State Office. The simultaneous oil and gas lease application was filed in Montana with reference to the Colorado serial number. The necessary agency qualification documents

^{3/ &}quot;Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulation where the term is used. 43 CFR 3000.0-5(g).

were on file or were subsequently filed in Colorado. Thus, when an application makes reference to a serial number, the application may not be rejected on the basis that filings are made in the BLM office maintaining the qualifications file rather than in the BLM office conducting the simultaneous drawing.

Filing by Stewart in the Colorado State Office in this case rather than the Montana State Office, was proper since Stewart's qualifications file was maintained in the Colorado State Office. Therefore, we cannot find that this was a sufficient basis for rejection of the application.

[2, 3] BLM also stated in its decision that Stewart's qualifications file was not current because there was no updated authorization in the file for Stewart to act for appellant in the May 1981 drawing. We find that BLM properly rejected the application on this ground.

When Stewart filed appellant's application in May 1981 and referenced C-20340, that file contained an expired agreement which had been executed in July 1980. Although appellant participated in other drawings after July 1980 (September 1980, November 1980, and January 1981), appellant executed renewal contracts (Annex C's) and timely filed those documents for those filing periods. Counsel for appellant also states that an Annex C was executed for May 1981. No copy of that document was filed with BLM until August 10, 1981. 4/ Therefore, reference to file C-20340 showed specifically that Stewart's authority to act on behalf of appellant had expired. 5/

"The undersigned ('Client') having entered into a filing service agreement with MELBOURNE CONCEPT INC ('Melbourne') and STEWART CAPITAL CORPORATION ('Stewart') which went into effect for a period beginning less than 21 months ago, hereby renews such agreement for an additional period after Stewart's receipt and acceptance of this signed from [sic] that shall be for the period during which the previous filing service agreement would have continued in effect if it had been first signed by Stewart on the date of Stewart's receipt and acceptance of this renewal."

Appellant signed the renewal agreement. The date under his signature is "5/15/81." The president of Melbourne signed. Under his signature appears the date "5/9/81." The vice president of Stewart also signed. No date appears under his signature.

5/ In an affidavit (Exh. B) attached to appellant's statement of reasons, Daniel P. Haether, vice president of Stewart, explained that logistical difficulties prevented Stewart from being able to receive, execute, and transmit appellant's executed renewal contract, Annex C, along with its usual

^{4/} Clause 13 of the Melbourne/Stewart/Gendelman filing service agreement stated:

[&]quot;13. <u>Renewal of Agreement</u>. This agreement may be renewed for additional filing services over subsequent similar periods. <u>Renewal requires client to notify Melbourne in writing</u>, on a form substantially the same as set forth in Annex C, and to accompany the notice with payment to Melbourne as provided in Annex C. Melbourne shall, upon signing the renewal notice, forward it to Stewart." (Emphasis added.)

The 'Annex C' filed on August 10, 1981, stated:

[&]quot;RENEWAL OF FILING SERVICE AGREEMENT

The preamble to the final Departmental rulemaking relating to 43 CFR 3102.2-1(c) stated:

Statement of Qualifications-General Requirements

* * * * * * *

Some comments suggested that the requirement of the proposed rulemaking that all statements of qualifications be kept current was too great a burden to place on an applicant. The provision has not been changed in the final rulemaking. No application or offer will be accepted unless the statements of qualifications are fully up to date in order to assure compliance with existing law and regulations. [Emphasis added.]

45 FR 35156, 35157 (May 23, 1980).

Counsel for appellant argues that 43 CFR 3102.2-6(b) only requires that a single copy of a uniform agreement and statement of understanding be filed. He points out that the regulation does not require an executed copy. This cannot be disputed. In this case if Stewart had filed a blank copy of its uniform agreement for filing under 43 CFR 3102.2-1(c), such agreement would have been sufficient to satisfy the uniform agreement requirement of 43 CFR 3102.2-6(b) when Stewart referenced the serial number.

Counsel for appellant further contends that upholding the BLM position would penalize appellant because Stewart did more than the regulations required by filing an executed copy of its filing service agreement. It is true that appellant undertook an obligation more onerous than that imposed by the regulations when it filed executed copies. However, having undertaken that obligation, Stewart cannot benefit from a claim that if it had acted

fn. 5 (continued)

submissions to the BLM Colorado State Office. <u>See</u> appellant's statement of reasons at 2. In the affidavit Haether states:

"2. In May of 1981 Stewart received an oral renewal of the filing contract of Mr. Alvin B. Gendelman. Shortly thereafter we received an executed copy of our standard 'Annex C' but not in time to be included in our filing information. Mr. Gendelman had not renewed his contract with us for the March, 1981 filing period, but had previously executed a full contract and several Annex C's. Upon receiving oral notification of his intent to file in the May drawings, we deemed ourself authorized and contractually required to do so. To us, the written contract which followed merely confirmed our understanding of his existent contract."

We note that clause 13 of appellant's filing service agreement requires that requests for renewal be in writing. See note 4 supra. In any event the whole purpose of these filing requirements is to disclose the nature of any agreement be it oral or committed to writing. Nothing filed by Stewart, until Aug. 10, 1981, indicated the nature of this oral agreement.

according to the regulations the application would not have been rejected. While the assumption concerning a blank agreement may be that the necessary authorization exists, when the record evidence plainly contradicts such an assumption, the application is properly rejected.

Counsel for appellant states that the facts in this case are, with slight variations, the same as those involving another Stewart client who won a Montana parcel in the January 1981 drawing, and that after an investigation the Montana State Office issued a lease. See Exh. C attached to appellant's statement of reasons. Counsel argues that the same result is dictated in this case. We do not agree. The fact that BLM may have acted contrary to regulation in a prior situation does not mandate that similar action be taken in this case. George Brennan, Jr., 1 IBLA 4, 6 (1970); see 43 CFR 1810.3.

We conclude that BLM properly rejected appellant's application. 6/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

	Bruce R. Harris Administrative Judge			
We concur:				
James L. Burski Administrative Judge	_			
Will A. Irwin Administrative Judge.	-			

6/ Given our resolution of the issue concerning the status of the qualifications file, we need not consider whether Stewart complied with the requirement of 43 CFR 3102.2-6(b) concerning the filing of a list of clients names and addresses. The Board has held that a filing service must provide the addresses, as well as the names of its clients. Bernard S. Storper, 60 IBLA 67, 72 (1981), appeal filed, Storper v. Watt, No. 82-0449 (D.D.C. Feb. 17, 1982). See Arthur H. Kuether, supra at 190 n.7.